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**IN THE
COURT OF APPEALS OF INDIANA**

ERIC JUSTIN DOVE,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 48A04-0701-CR-58
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Fredrick R. Spencer, Judge
Cause No. 48C01-0604-FB-157

August 3, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Following a guilty plea, Eric Dustin Dove appeals his aggregate sentence of twenty years for forgery, a Class C felony, theft, a Class D felony, and his status as an habitual offender. Dove raises two issues, which we restate as whether the trial court abused its discretion in sentencing Dove and whether his sentence is inappropriate in light of his character and the nature of his offense. Concluding that the trial court did not abuse its discretion and that the sentence is not inappropriate, we affirm.

Facts and Procedural History

In January 2006, Dove entered a home, stole a checkbook, and over the next few days wrote nine checks to various businesses. The aggregate amount of these checks totaled roughly \$1,780. On April 27, 2006, the State charged Dove with burglary, a Class B felony, theft, a Class D felony, forgery, a Class C felony, and with being an habitual offender. Dove and the State entered into a plea agreement, and on July 24, 2006, Dove pled guilty to forgery and theft and admitted to being an habitual offender.¹ In exchange, the State dropped the burglary charge.² Sentencing was left to the trial court, which held a sentencing hearing on August 21, 2006. At this hearing, the trial court ordered that Dove execute two years of the previous sentence³ that Dove had been serving on work release.⁴ The trial court then made

¹ Dove also admitted that by committing these crimes, he violated conditions of his probation and work release, which he was on for previous offenses.

² Dove did not provide this court with a copy of the plea agreement. However, in his brief, he admits that the State dropped the burglary charge as part of the agreement.

³ The previous sentence was for four years, with two years served on work release and two years suspended to probation.

the following statement regarding aggravating and mitigating circumstances:

[B]ecause of your significant criminal history, including multiple prior felony convictions, the court finds the aggravators outweigh the mitigators. The mitigator is that you pled guilty and although you've never expressed remorse, you kind of said I hope I do better. That's almost remorse, but it's sure a feeble effort at it.

Tr. at 28-29. The trial court then sentenced Dove to the maximum sentences of eight years for forgery, enhanced by twelve years because of his status as an habitual offender, and three years for theft, served concurrent to his forgery sentence, for an aggregate sentence of twenty years. Dove now appeals.

Discussion and Decision

I. Balancing of Aggravators and Mitigators

Dove argues that the trial court abused its discretion by not properly balancing the aggravating and mitigating circumstances. However, under the advisory sentencing scheme,

⁴ The trial court apparently considered ordering Dove to also execute the two years that had previously been suspended to probation, but was unsure whether it could legally do so. The trial court stated:

Well, it's not worth it as far as I'm concerned to pay David Stone a couple of thousands (sic) of dollars to figure out whether running away from work release amounts to a violation of probation. So why don't we just give him two (2) years with a hundred and seven (107) days [credit]? . . . You get out and I'll just give him the whole twenty (20) on the other one, and then there's no need for an appeal. Why . . . why waste the two thousand dollars (\$2,000.00) on this when I can just work it the other way around.

Transcript at 28. This comment came before the trial court ordered Dove's twenty-year sentence or explained its reasons for imposing the sentence. Although we conclude, *infra*, that the twenty-year sentence was not inappropriate, this comment could be interpreted as meaning that the trial court was going to give the defendant a maximum sentence regardless of the aggravating and mitigating circumstances, and does little to inspire confidence in justice handed out by trial courts. Also, at the close of the hearing, the trial court made a sarcastic comment regarding the amount of time Dove would be spending in jail and the chances of his girlfriend remaining faithful to him during his imprisonment. Although we recognize that the trial court may have been frustrated with this particular defendant, such comments do little to advance the image of an impartial and even-handed judiciary.

which applies to Dove,⁵ “[b]ecause the trial court no longer has any obligation to ‘weigh’ aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-Blakely statutory regime, a trial court can not now be said to have abused its discretion in failing to ‘properly weigh’ such factors.” Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). Therefore, Dove’s argument is without merit.⁶ We note that Dove filed his appellate brief before our supreme court handed down its decision in Anglemyer. At that point, there was considerable disagreement among the members of this court regarding appellate review of a trial court’s finding and balancing of aggravating and mitigating circumstances. See id. at 488. Therefore, the meritless nature of Dove’s argument was far from apparent at the time he filed his brief.

II. Appropriateness of Dove’s Sentence

When reviewing a sentence imposed by the trial court, we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B). We have authority to “revise sentences when certain broad conditions are satisfied.” Neale v. State, 826 N.E.2d 635, 639 (Ind. 2005). When determining whether a sentence is inappropriate, we recognize that the advisory sentence “is

⁵ Dove committed his crimes in January 2006, after the general assembly replaced the presumptive sentencing statutes with the current advisory sentencing statutes. Therefore, the advisory sentencing scheme applies to Dove. See Gutermuth v. State, 868 N.E.2d 427, 431 n.4 (Ind. 2007).

⁶ Dove does not argue that the trial court did not find mitigating circumstances supported by the record, or that the record did not support the aggravating circumstance of Dove’s criminal history. See id. at

the starting point the Legislature has selected as an appropriate sentence for the crime committed.” Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006). We must examine both the nature of the offense and the defendant’s character. See Payton v. State, 818 N.E.2d 493, 498 (Ind. Ct. App. 2004), trans. denied. When conducting this inquiry, we may look to any factors appearing in the record. Cf. Samaniego-Hernandez v. State, 839 N.E.2d 798, 806 (Ind. Ct. App. 2005) (“our review of the record does not disclose any basis upon which to grant relief relative to [defendant’s] character or the nature of the offense”), abrogated on other grounds, Anglemeyer, 868 N.E.2d 482; Julian v. State, 811 N.E.2d 392, 403 (Ind. Ct. App. 2004), trans. denied (examining facts of case to determine that sentence was not inappropriate based on defendant’s character).

Here, the trial court sentenced Dove to the maximum sentences for forgery and for theft, and enhanced the forgery sentence by the maximum amount allowed under the habitual offender statute. See Ind. Code §§ 35-50-2- 6, -7, -8. However, the twenty-year aggregate sentence was not the maximum sentence the trial court could legally have imposed, as the trial court ordered that the forgery and theft sentences run concurrently. We recognize that the trial court may not have been legally permitted to have ordered the eight-year and three-year sentences to run consecutively. For a series of non-violent offenses “that are closely related in time, place, and circumstance,” the aggregate sentence may not exceed the advisory sentence for a felony one class higher than the most serious felony of which the defendant was convicted. Ind. Code § 35-50-1-2. Had the trial court ordered that Dove’s

490-91. Dove argues that the trial court did not give enough weight to his guilty plea, but, as the trial court’s

three-year sentence run consecutively to Dove's eight-year sentence, the aggregate eleven-year sentence would have exceeded the ten-year advisory sentence for a Class B felony. See Ind. Code § 35-50-2-5. However, the trial court could have sentenced Dove to a two-year sentence for theft and eight-year sentence for forgery, enhanced the forgery sentence by twelve years, and ordered that the sentences run consecutively, for an aggregate sentence of twenty-two years.⁷ See Ind. Code § 35-50-1-2 (indicating that the limit on the aggregate sentence is exclusive of terms of imprisonment under the habitual offender statute). Although the twenty-year sentence is certainly close to the maximum legal sentence, and is significantly longer than the aggregate sentence that would have resulted had the trial court issued minimum or advisory sentences, it is not the maximum sentence. See Julian, 811 N.E.2d at 403.

In regard to the nature of the offense, we agree with Dove that his crime of forgery does not seem particularly egregious. Dove did cause over \$1,700 in damage as a result of his crime, and we recognize that causing harm or damage is not an element of forgery, which requires only intent to defraud. See Jacobs v. State, 640 N.E.2d 61, 65 (Ind. Ct. App. 1994), trans. denied (“[A] definite resulting injury is not required to prove fraudulent intent; the potential for injury is sufficient”); Gennaitte v. State, 243 Ind. 532, 540, 188 N.E.2d 412, 416 (1963) (forgery does not require that anyone is prejudiced by the uttering of the instrument).

sentencing statement indicates, it found Dove's plea to be a mitigating circumstance.

⁷ Whether or not the theft and forgery charges are closely related is immaterial to this opinion, and we need not make this determination. If the theft and forgery charges were not closely related, the trial court

In that sense, Dove may have caused more harm than required by the forgery statute. See Ind. Code § 35-38-1-7.1(a)(1) (court may consider it an aggravating circumstance where harm to the victim was significant and “greater than the elements necessary to prove the commission of the offense”). However, the forgery statute is clearly intended to include a variety of acts that either result in or carry the potential for monetary harm, and although \$1,780 is not a trivial amount, it is substantially less than amounts necessary to elevate other offenses involving economic harm. See Ind. Code §§ 35-43-4-2 (crimes of theft or receiving stolen property are elevated from Class D felonies to Class C felonies where value of property involved is at least \$100,000); 35-43-5-5 (crime of check deception is elevated from a Class A misdemeanor to a Class D felony where the check is for at least \$2,500 and is used to acquire a motor vehicle); 35-43-5-7 (crime of welfare fraud is elevated from a Class D felony to a Class C felony where the amount involved is at least \$2,500); 35-43-5-7.1, -7.2 (crimes of medical or insurance fraud are elevated from Class D felonies to Class C felonies where the amount involved is at least \$100,000); 35-43-5-12 (crime of check fraud is elevated from a Class D felony to a Class C felony where the amount involved is at least \$25,000).

However, based on the defendant’s character, we cannot conclude that the twenty-year sentence is inappropriate. Dove was twenty-five years old at the time he committed these crimes. Already, he had compiled a criminal history consisting of ten convictions, seven of which were for felonies. The effect of this extensive criminal history is amplified by the fact

could have ordered both maximum sentences to run consecutively, for an aggregate sentence of twenty-three

that many of these convictions are property related offenses similar in nature to the current offenses. See Prickett v. State, 856 N.E.2d 1203, 1209 (Ind. 2006). Dove also has a juvenile history consisting of three true findings. See Altes v. State, 822 N.E.2d 1116, 1125 (Ind. Ct. App. 2005), trans. denied (“[A] trial court’s assessment of a defendant’s future criminal behavior can properly be based upon the defendant’s adult or juvenile criminal history.”). Additionally, Dove has been placed on probation five times, but successfully completed probation only once and was on work release at the time he committed the current offenses. See Ind. Code § 35-38-1-7.1(a)(6) (trial court may consider fact that a defendant recently violated terms of probation as an aggravating circumstance). Since 1995, Dove has failed to go more than a year and a half without being arrested. It is clear that Dove has no respect for the laws of society and has a total lack of respect for the property rights of others. We cannot say that his near-maximum sentence of twenty years is inappropriate.

Conclusion

We conclude that the trial court acted within its discretion in sentencing Dove and that his sentence is not inappropriate given his character and the nature of his offenses.

Affirmed.

SULLIVAN, SR. J., and VAIDIK, J., concur.